IN THE

Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-1188

ELLIOT L. RICHARDSON, SECRETARY OF DEFENSE, ET AL.,
Petitioners,

—v.—

RESERVISTS COMMITTEE TO STOP THE WAR, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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* The complaint is reproduced as Appendix C to the petition for a writ of certiorari, pp. 37-48. The list of members of the 93rd Congress who are members of a reserve component is reproduced as Appendix D to the petition, pp. 49-51. The district court's opinion and order is reproduced as Appendix B to the petition, pp. 17-36. The judgment of the court of appeals is reproduced as Appendix A to the petition, pp. 15-16.

RELEVANT DOCKET ENTRIES

1970	
May 11	**Complaint filed**
July 29	**Defendants' motion to dismiss filed**
August 10	**Plaintiffs' opposition to motion to dismiss filed**
November 27	**Plaintiffs motion for summary judgment filed**
1971	
February 2	**Defendants' motion for summary judgment filed**
February 24	**Cross motions for summary judgment heard**
April 2	**Memorandum opinion and order granting declaratory judgment, and denying all other relief and dismissing complaint as to that relief filed**
May 28	**Defendants' notice of appeal filed**

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 1429-70

RESERVISTS COMMITTEE TO STOP THE WAR, ET AL., PLAINTIFFS

v.

MELVIN LAIRD, ET AL., DEFENDANTS

STATEMENT OF MATERIAL FACTS NOT IN ISSUE

1. Plaintiff Reservists Committee to Stop the War (Committee) is a national unincorporated association of present and former officers and enlisted members of the Reserves, organized for the purpose of opposing the military involvement of the United States in Vietnam and of using all lawful means to end that involvement, including efforts by its members individually to persuade the Congress of the United States and all members of the Congress to take all steps necessary and appropriate to end that involvement. It was founded in December, 1969. It has approximately 1,300 members, of whom 51 are Reserve officers.

2. Plaintiff Adam Hochschild is co-chairman of the Reservists Committee to Stop the War.

3. Plaintiff Ernest Notar is an officer in the Reserves, specifically the Naval Reserve, and is in active Ready Reserve status.

4. Plaintiff Bruce Phillips is an enlisted member of the Reserves, specifically the Air Force Reserve, and is in active Ready Reserve status.

5. Plaintiff David L. Kranz is an officer in the Reserves, specifically the Naval Reserve, and at the time the complaint in this action was filed was in active Ready Reserve status; but on June 3, 1970, was transferred to inactive Standby Reserve status.

6. Plaintiff George Holmes is an enlisted member of the Reserves, specifically the Army Reserve, and is in active Ready Reserve status.

7. All the individual plaintiffs are United States citizens and taxpayers and are residents of California. All share the views and aims of and are members of the Committee.

8. Defendant Laird is the Secretary of Defense of the United States with administrative authority, under the President as Commander in Chief, over the Armed Forces of the United States, including the Reserves.

9. Defendants Resor, Chafee and Seamans are the Secretaries of the Army, Navy and Air Force, respectively, with administrative authority, under the President as Commander in Chief and under the Secretary of Defense, over the armed services within their respective jurisdictions, including the respective Reserves.

10. Defendants may, in their discretion as provided in 10 U.S.C. 672 and 674, order members of the Reserves, including members of Congress who are members of the Reserves, into active duty without their consent

(a) for the duration of any war or national emergency declared by Congress;

(b) at any time, for members of the Reserve in active status, for no more than 15 days a year.

11. Defendants may at any time, in their discretion as provided in 10 U.S.C. 681, release members of the Reserves, including members of Congress who are members of the Reserves, from active duty.

12. All commissioned officers in the Reserves below flag or general officer rank are appointed by the President alone; all commissioned officers in the Reserve of flag or general officer rank are appointed by the President with the advice and consent of the Senate; commissioned officers in the Reserves of all ranks serve during the pleasure of the President and may be discharged by him alone; all as provided in 10 U.S.C. 593.

13. Senators and members of the House of Representatives subscribe to the following oath of office:

> I, _____, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance

to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter: So help me God.

14. Members of the National Guard subscribe to an oath to "obey the orders of the President of the United States and the Governor of the State of [name of state]", as provided in 32 U.S.C. 312.

15. On December 12, 1965, defendant Laird's predecessor as Secretary of Defense issued a directive transferring all members of Congress then in Ready Reserve to the Standby Reserve; but permitting those with a remaining statutory military obligation, or with more than 18 but less than 20 years of service toward retirement, to continue to participate voluntarily in Reserve training.

16. On May 22, 1969, defendant Laird authorized all persons, including members of Congress, transferred to the Standby Reserve by the directive referred to in paragraph 15, to be assigned, at their request, to the Active status list of the Standby Reserve, to participate in training and to earn training points creditable for promotion and retirement.

17. The Defense Department lists, as of June 10, 1970 (Appendix A), a total of 130 members of Congress in the Reserves. All but one, Senator John Tower of Texas, a Naval Boatswain's Mate 3d Class, are commissioned officers.

Two are Ready Reservists, attending drills. Thirty-four are active standby Reservists, earning points for retirement and promotion and participating in "training". Seventeen are retired with pay. Fifty-three are retired without pay, but some may begin to receive pay at age 60. 10 U.S.C. 1331, 1332. Four hold the rank of Major General, one the rank of Brigadier General and one the rank of Rear Admiral.

18. Members of the Reserve constitute a dominant minority, in numbers much greater in proportion than their numbers in proportion to the whole membership of the

Senate and of the House of Representatives respectively, in the Armed Services Committees of the Senate and the House of Representatives; the Veterans Affairs Subcommittee of the Labor and Public Welfare Committee of the Senate, and the Ways and Means Committee of the House of Representatives. Ten out of eighteen (56%) of the members of the Senate Armed Services Committee are Reservists; three out of seven (43%) of the members of the Senate Finance Committee's Subcommittee on Veterans Legislation are Reservists; thirteen out of forty (33%) of the members of the House Armed Services Committee are Reservists; eight out of twenty-five (33%) of the members of the House Veterans Affairs Committee are Reservists; four out of eleven (36%) of the members of the House Appropriations Committee's Subcommittee on Defense Appropriations are Reservists; four out of six (67%) of the members of the House Veterans Affairs Committee's Subcommittee on Compensation and Pension are Reservists.

19. Reservists receiving pay, and their Congressional assignments, include:

House of Representatives

Carl Albert	Majority Leader
William G. Bray	Armed Services
Cornelius E. Gallagher	
Charles R. Jones	Appropriations
John O. Marsh, Jr.	Appropriations
G. V. (Sonny) Montgomery	Veterans Affairs
William F. Nichols	Armed Services
Alexander Pirnie	Armed Services
Howard W. Pollack	
Benjamin Reifel	Appropriations
Olin E. Teague	Veterans Affairs (Chairman)
Louis C. Wyman	Appropriations

Senate

J. Caleb Boggs	Appropriations
Hiram Fong	Appropriations
Barry M. Goldwater	Armed Services
Edward J. Gurney	
Hugh Scott	Minority Leader
John J. Sparkman	Joint Committee on Defense Production (Chairman)
J. Strom Thurmond	Armed Services

20. In 1950 by Presidential Proclamation No. 2914 a call-up of Reservists that eventually totalled 938,379 officers and men was authorized for the Korean Conflict. In 1961, by joint resolution, P.L. 87-117, the Congress authorized a call-up of 250,000 men for the Berlin Crisis. 155,000 were called and 147,849 served. For the Cuban Missile Crisis, Congress by P.L. 87-736 authorized a call-up of 150,000 men. 14,200 were called and 14,025 served. For the Pueblo Crisis and for Vietnam, as of December 15, 1969, 35,280 Reservists had been called to duty. No members of Congress were included in any of these reserve call-ups.

21. Prior to January 18, 1965, there existed special reserve units whose membership consisted exclusively of members of Congress and Congressional staff personnel. Those units were designated the "Army Congressional Command Operations Reserve Group", the "Navy and Marine Corps Reserve Composite Company 5-48" and the "9999th Air Reserve Squadron".

22. Those units were disestablished on January 18, 1965.

23. On May 14, 1970, Senator Strom Thurmond, a retired Major-General in the Army Reserve who receives retired pay, proposed the re-establishment of "an Army Reserve Unit on Capitol Hill for members of Congress who are Army Reservists". The Secretary of Defense stated that he would not object to formation of such units.

WILLIAM A. DOBROVIR
1025 Connecticut Avenue, N.W.
Washington, D. C. 20036

STATE OF CALIFORNIA)
)
COUNTY OF SANTA CRUZ)

AFFIDAVIT

I, Adam Hochschild, President of the Reservists Committee to Stop the War, make the following affidavit:

The Reservists Committee to Stop the War was founded in December 1969. We have recently filed application for incorporation as a non-profit corporation in the state of California. A copy of our by-laws is attached.

The Committee now has approximately 1,300 members. All but a few are Reservists or National Guardsmen currently in Ready Reserve or Standby Reserve status. Some were active or standby Reservists or National Guardsmen at the time they became members but are no longer on such status. Fifty-one of our members are Reserve officers. Forty-nine are veterans of Vietnam.

One of the Committee's prime purposes is the circulation and publicizing of a statement against the war, which all of our members have signed. The statement has been published in the New York Times, the New Republic, and other publications. A copy is attached. Another principal activity is the publication of a monthly newsletter for all members and other interested persons. Several recent issues are attached. Other activities vary from one part of the country to another: some are described in the issues of the newsletter.

Reservists Committee members come from more than 30 states. About 50% are residents of California, the state where the Committee started; the remainder are scattered in other parts of the country, with heavy concentrations in New York, New England, and the Washington, D. C. area. There are chapters or affiliated organizations in a number of different cities: San Francisco, Los Angeles, New York, Boston, Baltimore, Washington, Seattle, Chicago, Providence. In some cities, such as Providence, Chicago and Seattle, the groups officially call themselves local chapters of the Reservists Committee to Stop the War. In other cases the local group has

a different name but has become affiliated with us, and we list their address in our newsletter so members from their area can contact them.

Members come from all seven components of the U.S. Reserve Forces: the Army, Navy, Air Force, Marine, and Coast Guard Reserves, and the Air and Army National Guard. There are more Army Reservists and Marine Reservists than any others.

The Committee is currently engaged in two other legal actions, in both of which we are a co-plaintiff with coalitions of other peace organizations. One is a lawsuit in Federal District Court in Washington, attempting to procure for peace groups the same access to government mailing lists of military veterans now held by groups like the American Legion and the V.F.W. The other legal action is a complaint to the Federal Communications Commission, requesting equal time against military recruiting commercials on the same basis on which anti-smoking ads get equal time against cigarette commercials. The FCC recently denied the request; it is expected to be appealed.

The Reservists Committee does not maintain a full-time staffed office. It does, however, employ part-time clerical help to handle printing and mailing of the newsletter and other literature. This, and all other expenses, are paid for by contributions of members.

The Committee expects to grow and to represent the interests of Reservists and its members in ending the war in Vietnam.

/s/ Adam Hochschild
ADAM HOCHSCHILD

Subscribed and sworn to before me this 27th day of October, 1970.

/s/ [Illegible]
Notary Public

My commission expires: Oct. 10, 1971

SUPREME COURT OF THE UNITED STATES

No. 72-1188

ELLIOT L. RICHARDSON, SECRETARY OF DEFENSE, ET AL., PETITIONERS

v.

RESERVISTS COMMITTEE TO STOP THE WAR, ET AL.

ORDER ALLOWING CERTIORARI—Filed April 23, 1973

The petition herein for a writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit is granted.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1973